

# U.S. Court of Appeals Says Almond Milk Is Milk

Almond milk producers are allowed to call their product milk, says the U.S. Court of Appeals for the Ninth Circuit. The court agreed with another court dismissal of a class action lawsuit filed against Blue Diamond Growers, makers of the best selling almond milk in the United States. The lawsuit alleged that the company was misleading consumers and subsequently advocated for labeling plant-based milk as “imitation milk” due to their inferior nutritional content. This is not the first time nut milk has found itself fighting to use the term milk, as the dairy industry is using all avenues available to them to deal with a culturally, ethically, and environmentally shifting world.

## Ongoing Saga

The initial lawsuit against Blue Diamond Growers was filed in January 2017. The almond thing has been in court since at least 2017. The case was dismissed with prejudice in 2017, and the case was then appealed by the plaintiff in 2018. After the second dismissal due to the lack of proof that consumers would be misled by almond milk’s nutritional claims and information, it seems unlikely that almond milk manufacturers will need to change their labeling practices based on this lawsuit. They will, however, need to reconcile this issue with the Food and Drug Administration sooner rather than later.

In a statement released in September 2018, FDA commissioner Scott Gottlieb expressed sentiments remarkably similar to those in the case against Blue Diamond Growers.

*The wide variety of plant-based foods that are being positioned in the marketplace as substitutes for standardized dairy products has been the subject of much discussion in our*

*initial work on the Nutrition Innovation Strategy. The rising demand for plant-based products, like soy-based alternatives to cheese and nut-based alternatives to milk, has created a growing number of new food choices in supermarket aisles. However, these products are not foods that have been standardized under names like “milk” and “cheese.” The FDA has concerns that the labeling of some plant-based products may lead consumers to believe that those products have the same key nutritional attributes as dairy products, even though these products can vary widely in their nutritional content. It is important that we better understand consumers’ expectations of these plant-based products compared to dairy products.”*

It’s comforting to hear that the FDA is paying attention to and invested in the changing nutritional needs of the public. Still, recent studies have found that milk doesn’t provide nearly the health benefits either, especially if you’re unable to easily digest it. Yet the FDA references the nutritional superiority of dairy with the phrase “key nutritional attributes.” Why is the government agency acknowledging new attitudes without making room for the possibility that we might not need milk like previous generations thought we did?

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## **Dairy Farmers in Crises**

The growing interest in relabeling milk alternatives has a direct correlation with the fortunes of the dairy industry. The dairy industry is in a particularly rough spot and has been for decades now. Dairy consumption has dropped by 40 percent since the 1970s, and that shows no sign of stopping. The dairy industry has received two separate bailouts within the last three years, including a billion dollar allotment in a budget agreement signed by the Senate in 2018 and a USDA purchase of 11 million dollars of surplus cheese in 2016.

Previous efforts at combating the downward trend include the popular got milk campaign, but the current business strategy of blaming alternative milk for declining milk sales isn't likely to fix the issues with the dairy industry.

Nut milk appeals to the lactose intolerant, the health conscious, the environmentally conscious, and vegans. The public is also paying more attention to how their food is produced, and several dairy industry practices make consumers less likely to support the dairy industry. These practices include but are not limited to separating mothers and babies less than a week after birth, dehorning cows, and keeping cows constantly pregnant.

In addition to shifting public perceptions, the dairy industry is also dealing with a problem of their own making. While the demand for milk and other dairy products has declined, dairy producers have continued to build their surplus. In 2017, the reported milk surplus was more than four times the amount of the actual consumer demand for milk. This imbalance also negatively affects dairy farmers, who are forced to sell milk for lower prices. Many farmers are subsequently going out of business.

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## **Milking Nuts**

All of this is good news for nut milk producers like Blue Diamond Growers, the defendant in this case. The dairy industry is losing its mojo, and this lawsuit and other stalling tactics are only increasing the whiff of desperation. The dairy industry may not like the competition from nut milk and other non-dairy alternatives, but that won't change the fact that those products are here to stay.

**Sources:**

- *Federal Court Rules that Almond Milk is Milk – VegNews*
- *Amongst FDA SOI Conversation, Ninth Circuit Agrees Consumers Are Not Misled by Plant-Based Milks – National Law Review*
- *Statement from FDA Commissioner Scott Gottlieb, M.D., on modernizing standards of identity and the use of dairy names for plant-based substitutes – FDA*
- *Dairy Organizations Applaud Congressional Letter to FDA Asking for Stricter Enforcement of Milk Labeling Standards – NMPF*
- *Big Dairy Is About to Flood America's School Lunches With Milk – Bloomberg*